
In the Matter of:	:
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	:
Chanetta Tolliver,	: HUDBCA No. 04-A-CH-AWG24
	: Claim No. 770989025
Petitioner	:

Chanetta Tolliver	<u>Pro se</u>
6302 Gaston St.	
Houston, TX 77016	

Michael Berke, Esq.	For the Secretary
Office of Regional Counsel	
U.S. Department of Housing and	
Urban Development	
77 West Jackson Boulevard	
Chicago, Illinois 60606-3507	

DECISION AND ORDER

Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes Federal agencies to utilize administrative wage garnishment for the collection of debts owed to the United States Government.

The administrative judges of this Board have been designated to determine whether the Secretary may collect the alleged debt by administrative wage garnishment if contested by a debtor. 24 C.F.R. § 17.170(b). This hearing was conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11 (f)(8)(i). Petitioner thereafter must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the Petitioner, or that collection of the debt may not be pursued due to operation of law, 31 C.F.R. §

285.11 (f)(8)(ii). Pursuant to 31 C.F.R. § 285.11 (f)(10)(i), issuance of a wage withholding order was stayed by this Board until the issuance of this written decision.

SUMMARY OF FACTS AND DISCUSSION

On January 20, 1994 Petitioner and MacArthur Tolliver, Jr. jointly executed and delivered to University Mobile Homes, Inc., a manufactured home retail installment sales contract (the "contract," "loan," or "note") in the amount of \$43,322 for the purchase of a new American Homestar/HS 824 mobile home. This loan was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. §1703 (g). (Secretary's Statement, hereinafter "Secy. Stat.," unmarked exh.). Thereafter, this loan was assigned to Oakwood Homes Corporation Idem. Petitioner failed to make payments as agreed to in the note. On April 2, 1997, Oakwood Homes Corporation assigned the note to the United States of America in accordance with 24 C.F.R. Sec. 201.54 (2003). Petitioner is currently in default on the note and the Secretary is the holder of the note on behalf of the United States of America. (Secy. Stat., unmarked exh.). Petitioner is indebted to the Secretary in the following amounts: \$28,496.83 as the unpaid principal through May 31, 2004; \$13,454.78 as the unpaid interest on the principal balance at 5% through May 31, 2004; and interest on said principal balance from May 1, 2004 at 5% annum until paid. (Secy. Stat., exh. B, Declaration of Brian Dillon, hereinafter "Dillon Decl.>").

Petitioner claims that she is named Chanetta Berry and that she "ha[s] never owned a home and [has] never been a Chanetta Tolliver [,but has] been Chanetta Jackson and Chanetta Berry." (Unmarked document attached to Administrative Wage Garnishment Hearing Resolution request dated June 1, 2004; Secy. Stat., second exh. B). However, the Secretary has submitted documentary evidence which shows that Petitioner's address and the address of Chanetta Berry as of June 3, 2004 are identical, i.e., 6302 Gaston Street, Houston, TX 77016. This document also lists as known aliases for Chanetta Berry the names of Chanetta Jackson, Chanetta Tolliver, and Berry Chanetta. (Secy. Stat., exh C, Infile Report of CBC Companies/credit bureau reports.com).

The Secretary has also submitted a document dated June 3, 2004, written and signed by Chanetta Berry, which states:

I am writing this letter due to a debt for the amount of \$53,622.61 that is on my credit that I should not be responsible for...[sic]. This debt belongs to MacArthur Tolliver Jr. He and I share a child together but we never married [.I]n the early 90's he was

married to Sandra Faye Tolliver who later became sick and later died. Then he later married Patricia Tolliver. I feel as though I should not be held accountable for this debt. (Secy. Stat., exh. E).

While Chanetta Berry claims in this document that she and MacArthur Tolliver, Jr., the co-signer of the contract, were not married, it is clear that Chanetta Berry had a close and intimate relationship with MacArthur Tolliver. In any event, marital status is generally not relevant to establish the liability of a co-signor in a loan agreement.

By letter dated March 15, 1994 and signed by both MacArthur Tolliver, Jr., and Chanetta Tolliver, to Home Owners Funding regarding "Late/Slow derogatory [sic] Credit," MacArthur Tolliver states:

While in the military my wife became very sick. I needed additional money to return to the United States to see her and take care of some additional bills. It was our understanding our insurance would pay these bills. The insurance did nothing. We have now made amends with the creditors. (Secy. Stat., exh. H).

This document suggests that MacArthur Tolliver and Petitioner were presenting themselves as man and wife in early 1994 and lends further credence to the Secretary's position that Petitioner, aka Chanetta Berry, is the co-signor of the note at issue and remains obligated to repay this debt.

As a co-signor on the installment note, Petitioner is jointly and severally liable with MacArthur for repayment of this debt. "Liability is characterized as joint and several when creditor may sue the parties to an obligation separately or together." Mary Jane Lyons Hardy, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). This means that the Secretary may proceed against any cosigner for the full amount of the debt. For Petitioner not to be held liable for the full amount of the debt, there must either be a release in writing from the lender specifically discharging Petitioner's obligation, or valuable consideration accepted by the lender from Petitioner, which would indicate an intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986). Petitioner has submitted no evidence to establish the existence of a valid release, and remains legally obligated for the repayment of this loan.

Petitioner has not filed documentary evidence which sufficiently rebuts the evidence, exhibits and declarations set forth the Secretary's Statement. Therefore, upon due consideration of the entire record before me, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

ORDER

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is vacated.

It is hereby ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law.

David T. Anderson
Administrative Judge

August 26, 2004